

REMARKS/ARGUMENTS

The amendments set forth above and the following remarks are responsive to the points raised by the Office Action dated February 9, 2009. In view of the amendments set forth above and the following remarks, reconsideration is respectfully requested.

Request for an Interview

In accordance with MPEP § 713.01, the Applicant's representative requests a telephone interview with the Examiner.

The Pending Claims

Claims 1-2, 6, 13, and 15-19 are pending. Claims 15-19 are withdrawn from consideration. Claim 1 is amended to include the limitations of claim 3, which is cancelled, and to define the invention more clearly. No new matter is added, and support for the amended claim language may be found within the original specification, claims, and drawings. Support for claim 1 may be found in the specification at, e.g., page 2, lines 19-22 and original claims 1 and 3.

Obviousness Rejection

Claims 1-3, 6, and 13 were rejected under 35 U.S.C. § 103 as unpatentable over DE 200707028 to Herlitz (hereinafter, "Herlitz") in view of U.S. Patent No. 6,354,486 to Ho (hereinafter, "Ho").

This rejection is separately and respectfully traversed.

The obviousness rejection cannot be maintained for at least several reasons. First, the proposed modification of Herlitz in view of the teachings of Ho would make the device of Herlitz unsatisfactory for its intended purpose. Second, the proposed modification of Herlitz is improperly based on hindsight reasoning. Third, the Office Action fails to explain why it would have been obvious to one of ordinary skill in the art to modify Herlitz to store pages that are "securely connected to the binding" in the pocket 15 of Herlitz. Fourth, the cited combination of Herlitz and Ho fails to teach or suggest each and every element of the claim,

and one of ordinary skill in the art would not have been motivated to modify Herlitz to arrive at the claimed invention.

Herlitz discloses a document filing folder in which the two flaps 32 and 33 are glued to one another to define a pocket 15, and discloses that separated sheets are stored in the pocket. The Office Action correctly acknowledges that Herlitz does not teach that the flaps 32, 33 are foldable from an open position to closed position, wherein in the open position, the notebook pages are fully accessible, as claimed in claim 1.

Ho discloses a document holder including a closing mechanism and anterior and posterior sheets, one of which may include a first, second, and third foldable flaps along lower, upper, and lateral edges of the sheet.

According to the Office Action, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the folder of Herlitz with the flaps and closing mechanism of Ho in order to provide a folder capable of adjusting the folder flaps to hold stacks of sheets in increasing size and securely holding the holder closed.

The Applicant submits herewith an English translation of Herlitz. Herlitz teaches that when the folder of Herlitz is closed as shown in Figure 1, any sheets stored within the pocket 15 are prevented from sliding laterally (from left to right), and the sheets are accessible only upwardly, as shown in Figure 2 (English translation, page 5, 3rd paragraph). In other words, the sheets in the pocket 15 are preventing from sliding from left to right when the folder is closed because of the spiral binding 18a adjacent to the corresponding edges of sheets within the pocket 15.

Thus, the proposed modification of Herlitz to have the unfastened, foldable flaps of Ho would make the device of Herlitz unsuitable for its intended purpose, which is to form a firm pocket in which to prevent the lateral movement of loose, separated pages. Herlitz states that the pages are separated 11 times throughout its text, emphasizing that the pocket stores loose, separated pages (Abstract; page 3, 1st and 4th full paragraphs; page 4, 9th full paragraph; page 5, 1st and 6th full paragraphs; claims 1 and 12). Modifying Herlitz to have the unfastened, foldable flaps of Ho would not form a firm pocket that would prevent the lateral movement of loose, separated pages. Moreover, modifying the folder of Herlitz to have a third, upper foldable flap, as alleged by the Office Action, would make the folder of

Herlitz unsuitable for its intended purpose, which is to make the loose pages stored in the pocket 15 upwardly accessible when the folder is closed. Placing a third flap along the upper edge of the folder of Herlitz that would be folded on the lateral flap 32 when the folder is closed would interfere with the upward accessibility of the loose pages stored in the pocket when that folder is closed. Accordingly, the proposed modification of Herlitz is improper because it alters the principle of operation of the device of Herlitz. Accordingly, the obviousness rejection cannot be maintained.

Additionally, the applicant maintains that the proposed modification of Herlitz in view of the teachings of Ho is improperly based on hindsight reasoning. The Office Action states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the folder of Herlitz with the flaps and closing mechanism of Ho in order to provide a folder capable of adjusting the folder flaps to hold stacks of sheets in increasing size and securely holding the holder closed. The applicant asserts that this statement results from improperly reading into Herlitz the teaching of the claimed invention. Because the proposed modification of Herlitz with Ho is impermissibly based on hindsight, the obviousness rejection cannot be maintained.

In addition, for an obviousness rejection to be maintained, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art and must provide an appropriate supporting rationale for the proposed modification (*KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. 398, 82 USPQ2d 1385 (2007); (MPEP § 2141). The Office Action states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the folder of Herlitz with the flaps of Ho in order to provide a folder capable of adjusting the folder flaps to hold stacks of sheets in increasing size. However, the Office Action fails to explain why it would have been obvious to one of ordinary skill in the art to modify Herlitz to store pages that are “securely connected to the binding,” as claimed in claim 1, in the pocket 15 of Herlitz. Thus, the Office Action has not set forth a rationale for modifying the folder of Herlitz in view of Ho, and therefore, the obviousness rejection of the claims cannot be maintained.

In addition, the cited combination of Herlitz and Ho fails to teach or suggest each and every element of the claim. Neither Herlitz nor Ho teaches or suggests a filing folder in

which notebook pages, securely connected to the binding, are storable under first, second and third flaps that are foldable toward the interior side of the first sheet and away from the interior side of the first sheet, as claimed in claim 1. Ho is intended to store individual, separate papers confined within a space defined by the first, second, and third flaps 14, 16, and 17 in their first folded position. Ho does not teach notebook pages fastened to a binding, and does not teach that the confining space defined by first, second, and third flaps 14, 16, and 17 is capable of storing notebook pages fastened to a binding. Additionally, because Ho does not have a binding, one of ordinary skill in the art would not be motivated to modify Herlitz's folder in view of Ho so that the sheets bound to the spiral binding 18a could be stored under the flaps 32, 33 that are glued in the folded position against the anterior sheet 31. Accordingly, the obviousness rejection cannot be maintained.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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